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UNITED STATE DISTRICT COURT

Northern District of California

CYNTHIA GUTIERREZ, JOSE HUERTA,
SMH, RH and AH,

Plaintiffs,

vs.

SANTA ROSA MEMORIAL HOSPITAL, ST.
JOSEPH HEALTH and DOES 1-50, inclusive,

Defendants.

Case No. 3:16-cv-02645-SI

~~[PROPOSED]~~ **ORDER APPROVING
PETITION TO APPROVE
COMPROMISE OF PENDING
ACTION AND DISPOSITION OF
PROCEEDS OF JUDGMENT/MINOR**

Hon. Susan Illston

In accordance with the Court's "ORDER RE : FEE PETITION" Ordered March 25, 2019
the following proposed order is hereby submitted:

The matter for court approval of the minor's compromise having been the subject of both
an original and Supplemental Petition for approval is hereby ordered approved as follows:

The total settlement is \$3,800,000.00. Of that 2/9 (\$844,444.00) is allocated to the two
minor claimants.

The total of the costs incurred is \$497,807.30.

The court has determined that the attorney fees shall be based on the net total recovery i.e.
the gross total recovery minus costs (\$3,800,000.00 minus \$497,807.30) .

The court has further determined that it is appropriate to apply all the costs (i.e.
\$497,807.30) to the \$500,000.00 recovery attributed to the doctor defendants based on MICRA.
As such there is a net recovery of \$2,192.70 on this \$500,000.00 gross MICRA recovery. This

1 results in a 40% attorney fee which therefore totals \$877.08 for the approved attorney fee based
2 on this MICRA recovery of \$500,000.00.

3 Further that the remaining claim based on EMTALA is not subject to any reduction of
4 costs and therefore the \$3,300,000.00 recovery based on EMTALA is appropriately calculated at
5 the agreed to attorney fee of one-third and therefore is approved in the amount of \$1,100,000.00.

6 As such the total attorney fee is hereby approved in the amount of \$1,100,877.08.

7 Petitioner, JOSE HUERTA, and Claimants RH and AH have petitioned for Court
8 approval of a proposed compromise of a disputed claim of a minor or a pending action involving
9 a minor or a person with a disability for a proposed disposition of the proceeds of a settlement for
10 a minor or a person with a disability.

11 Petitioner is the parent of the two minor Claimants.

12 Claimants RH and AH are minors.

13 The claim or action to be compromised is asserted.

14 The Court finds that all notices required by law have been given.

15 THE COURT HEREBY ORDERS AS FOLLOWS FOR GOOD CAUSE SHOWN:

16 The petition is granted and the proposed compromise of claim or action and the proposed
17 disposition of the proceeds of the settlement is hereby approved.

18 The payors shall disburse the proceeds of the settlement or judgment approved by this
19 order in the following manner:

20 Fees and expenses shall be paid by one or more checks or drafts, drawn payable to the
21 order of the Petitioner and the Petitioners' attorney or directly to third parties entitled to receive
22 payment identified in this order for the following items of expense or damage, which are hereby
23 authorized to be paid out of the proceeds of the settlement.

24 By way of settlement, one or more of the defendants named in item XI (B) have also
25 offered to pay money to a person or persons other than minor claimants, AH and RH, to settle
26 claims arising out of the same incident or accident that resulted in the claimants' injury:

27 Defendants, Elliot Brandwene, M.D., CHASE DENNIS EMERGENCY MEDICAL
28 GROUP, and TEAM HEALTH shall pay a collective total as follows:

1 The sum of \$500,000.00 payable to the Law Office of Douglas C. Fladseth Attorney-
 2 Client Trust Account toward the following: \$497,807.30 costs; \$2,192.70 toward fees of both
 3 cases.

4 Defendant, Santa Rosa Memorial Hospital and St. Joseph Health shall collectively pay as
 5 indicated below the following sums to the Plaintiffs with the combined present value sum of
 6 \$3,300,000.00:

7 The sum total of \$1,955,000.00 shall be paid to the Law Office of Douglas C. Fladseth
 8 Attorney-Client Trust Account for the following:

9 \$733,771.88 for Cynthia Gutierrez's special needs trust and payment of Medicare and
 10 Medi-Cal liens.

11 \$533,771.88 up front cash for Jose Huerta.

12 \$29,590.62 up front cash for SH.

13 \$29,590.62 for RH's blocked account.

14 \$29,590.62 for AH's blocked account.

15 \$598,684.38 for attorney's fees for Douglas C. Fladseth.

16 Certain payments not to be paid to Douglas C. Fladseth's Attorney-Client Trust Account
 17 but instead only directly by Defendants to the annuity life insurance companies [necessary for tax
 18 purposes or otherwise payment to Plaintiff counsel's trust account might be considered
 19 constructive receipt] are as follows:

20 \$200,000.00 payable to PASSCorp to fund periodic payments for Jose G. Huerta as will
 21 be outlined in the Settlement Agreement and Release.

22 \$215,000.00 payable to Pacific Life & Annuity Services, Inc. to fund periodic payments
 23 for SH as outlined in the Settlement Agreement and Release.

24 \$500,000.00 payable to Mutual of Omaha Structured Settlement Company to fund
 25 periodic payments for attorney Douglas C. Fladseth for the convenience of the Plaintiffs as will
 26 be outlined in the Settlement Agreement and Release.

27 \$215,000.00 payable to MetLife Assignment Company, Inc. to fund periodic payments
 28 for RH as outlined in Section A. below.

1 \$215,000.00 payable to PASSCorp to fund periodic payments for AH as outlined in
2 Section B. below.

3 Periodic payments made according to the Schedule of Payments as follows (the "Periodic
4 Payments"):

5 A. Payee: RH

6 \$20,000.00 guaranteed lump sum payable on 01/06/2023.

7 \$30,000.00 guaranteed lump sum payable on 01/06/2026.

8 \$40,000.00 guaranteed lump sum payable on 01/06/2029.

9 \$50,000.00 guaranteed lump sum payable on 01/06/2032.

10 \$190,170.86 guaranteed lump sum payable on 01/06/2035.

11 Assignment: Santa Rosa Memorial Hospital's and/or its Insurer's obligation to make the
12 periodic payments described in Section A. shall be assigned to MetLife Assignment Company,
13 Inc. ("MetLife Assignee"), through a Qualified Assignment and funded by an annuity contract
14 issued by Metropolitan Tower Life Insurance Company ("Metropolitan Annuity Issuer"), rated
15 A+XV by A.M. Best. To fund the periodic payments, Santa Rosa Memorial Hospital and/or its
16 Insurer will issue a check in the amount of \$215,000.00 payable to MetLife Assignment
17 Company, Inc. and execute the Qualified Assignment and Release Agreement. In the event the
18 Payee pre-deceases issuance of any of the above payments, the Payee's estate shall be designated
19 as Beneficiary and all remaining payments shall be made to the Payee's estate. After the age of
20 majority, the Payee may submit a change of beneficiary in writing to the MetLife Assignee. The
21 designation must be in a form acceptable to the MetLife Assignee.

22 B. Payee: AH

23 \$10,000.00 semi-annually, guaranteed 5 years, beginning 07/01/2026. Last
24 payment due 01/01/2031.

25 \$1,000.00 monthly, guaranteed 7 years, beginning on 10/22/2025. Last payment
26 due 09/22/2032.

27 \$20,000.00 guaranteed lump sum payable on 10/22/2025.

28 \$25,000.00 guaranteed lump sum payable on 10/22/2032.

\$90,747.94 guaranteed lump sum payable on 10/22/2037.

Assignment: Santa Rosa Memorial Hospital's and/or its Insurer's obligation to make the periodic payments described in Section B. shall be assigned to Prudential Assigned Settlement Services Corporation (PASSCorp) ("PASSCorp Assignee") through a Qualified Assignment and funded by an annuity contract issued by The Prudential Insurance Company of America ("Prudential Annuity Issuer"), rated A+XV by A.M. Best. To fund the periodic payments, Santa Rosa Memorial Hospital and/or its Insurer will issue a check in the amount of \$215,000.00 payable to PASSCorp and execute the Qualified Assignment and Release Agreement. In the event the Payee pre-deceases issuance of any of the above payments, the Payee's estate shall be designated as Beneficiary and all remaining payments shall be made to the Payee's estate. After the age of majority, the Payee may submit a change of beneficiary in writing to the PASSCorp Assignee. The designation must be in a form acceptable to the PASSCorp Assignee.

The future periodic payment amounts outlined above are guaranteed based upon a projected annuity purchase date of June 1, 2019. Any delay in funding the annuities may result in a delay of the payment dates or change in payment amounts that shall be recorded in the settlement agreement and release, qualified assignment documents and annuity contracts without the need of obtaining an amended Petition/Court Order up to 180 days after original purchase date.

All sums set forth herein constitute damages on account of personal, physical injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

SUMMARY OF DISBURSEMENTS

Gross amount of proceeds of settlement or judgment for Claimants:	\$3,800,000
Medical expenses to be paid from proceeds of settlement or judgment:	\$0
Attorney's fees to be paid from proceeds of settlement or judgment:	\$1,100,877.08
Expenses (other than medical) to be paid from proceeds of settlement or judgment:	\$497,807.30

1	Total of fees and expenses to be paid from proceeds of settlement	
2	or judgment:	\$1,598,684.38
3	Balance of proceeds of settlement or judgment available for	
4	Claimants after payment of all fees and expenses:	\$2,201,315.62
5		(\$244,590.62 to each
6		current minor child =
7		\$489,181.24 plus
8		\$244,590.62 to SH -
9		now 18, \$733,771.88
10		to husband/father Jose
11		Huerta and
12		\$733,771.88 for the
13		benefit of CYNTHIA
14		via a special needs
15		trust) (subject to the
16		Medicare and Medi-
17		Cal liens on
18		CYNTHIA's share).

DISPOSITION OF BALANCE OF

PROCEEDS OF SETTLEMENT OR JUDGMENT

21	Gross amount of proceeds of settlement or judgment for Claimants:	\$3,800,000
22	Medical expenses to be paid from proceeds of settlement or judgment:	\$0
23	Attorney's fees to be paid from proceeds of settlement or judgment:	\$1,100,877.08
24	Expenses (other than medical) to be paid from proceeds of settlement	
25	or judgment:	\$497,807.30
26	Total of fees and expenses to be paid from proceeds of settlement	
27	or judgment:	\$1,598,684.38
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Claimants after payment of all fees and expenses: \$2,201,315.62
 (\$244,590.62 to each
 minor child =
 \$489,181.24 plus
 \$244,590.62 to SH -
 now 18, \$733,771.88
 to parent and
 \$733,771.88 to
 CYNTHIA to be
 placed in a special
 needs trust)

STATUTORY LIENS FOR SPECIAL NEEDS TRUST

Medicare: \$203,898.70; Medi-Cal: Unknown at this time. The lien as of 9/11/18 was \$1,821,549.80 but it is anticipated that amount will be reduced.

SUMMARY AND ALLOCATION OF ATTORNEY COMPENSATION

That the payment of the \$1,598,684.38 amount for part of the attorney fees (\$600,877.08) and costs (\$497,807.30) be made directly to the Attorney-Client Trust Account of Law Office of Douglas C. Fladseth and for \$500,000.00, the balance of the attorney fees, to be paid directly to Mutual of Omaha Structured Settlement Company to fund periodic payments to attorney Douglas C. Fladseth for the convenience of the Claimants.

Dated: 3/29/19

Hon. Susan Illston